

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4345 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KOSAMBA GRAM PANCHAYAT

Versus

ADDITIONAL DEVELOPMENT COMMISSIONER

Appearance:

MR PJ KANABAR for Petitioner

Ms.Manisha Lavkumar, learned A.G.P. for
respondent No.1.

Mr.Pinakin Raval for

MR DC DAVE for Respondent No. 2

MR AJ YAGNIK for Respondent No. 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 03/04/2000

ORAL JUDGEMENT

This Special Civil Application is directed

against the order dt.10.6.99 passed by the Addl. Development Commissioner in an Appeal under S.57(3) of the Gujarat Panchayats Act.

Respondent No.3 was holding the office of the Sarpanch of Gram Panchayat, Kosamba, Taluka Valsad, District - Valsad. The District Development Officer passed an order dt.17.4.99 against the petitioner after issuing a show cause notice to respondent No.3 and removed him from the office of the Sarpanch under S.57(1).Against this order dt.17.4.99 the respondent No.3 preferred an Appeal under S.57(3) before the Addl. Development Commissioner. The Addl. Development Commissioner entertained the Appeal but rejected the application for interim relief. Respondent No.3, therefore, preferred Special Civil Application No.3159/99 before this court which was decided on 30.4.99 directing the Addl. Development Commissioner to hear the petitioner personally on application for interim relief and after affording an opportunity of hearing to the petitioner to dispose of the Application for injunction in the nature of interim relief through a reasoned and speaking order within seven days from the date of the production of the copy of the order. It appears that after the removal order of respondent No.3, as was passed by the District Development Officer on 17.4.99, one Shri Rajesh P.Tandel, who was Upa-Sarpanch took over as Sarpanch and this petition filed by the Panchayat has been filed through the Upa-Sarpanch. In para 7 of the petition at page 9 it has been stated that the respondent No.3 had obtained the order dt.30.4.99 in Special Civil Application filed by him and also obtained the order of direct service and yet did not serve this order dt.30.4.99 upon the respondent No.1 i.e. Addl. Development Commissioner. This averment made in the petition has not been controverted by any of the respondents. In any view of the matter, the aforesaid order of this court passed on 30.4.99 was only with regard to the interim order. The Addl. Development Commissioner then allowed the Appeal on 10.6.99 and there is no reference to this Court's order dt.30.4.99 therein. It is this order dt.10.6.99 passed by the Addl. Development Commissioner allowing the Appeal of respondent No.3 which is under challenge in this petition.

Mr. Kanabar appearing for the petitioner Panchayat has submitted that apart from the fact that there are no reasons in this order dt.10.6.99, the Addl. Development Commissioner has taken the order impugned in the Appeal as if it was an order of suspension and has

set aside the order passed by the District Development Officer, as if it was an order of suspension whereas in fact the order was for removal. It is submitted that the order shows total non application of mind and, therefore, deserves to be quashed and set aside. It has been submitted on behalf of the respondents that in the beginning of the order, the Authority has noted that the Appeal was directed against the order of removal and, therefore, in the later part of the order, if it is mentioned that the suspension order could not be passed against the petitioner, the same is immaterial and the order cannot be set aside on this ground.

I have considered the submissions made on behalf of both the sides. It is not a mere mention of the suspension instead of removal, but the Judgment in the case of Narayan Chaudhari v. R.S.Vaghela, which has been relied upon by the Addl. Development Commissioner, is also a case with regard to suspension inasmuch as the Addl. Development Commissioner has stated that in the aforesaid case it was held by the Gujarat High Court that merely because a police case had been filed, the suspension could not be ordered. The entire tenor of the order shows that the approach of the Addl. Development Commissioner was as if it was an order of suspension and the Appeal has been allowed only by saying that the order dt.17.4.99 was not a proper order. The Addl. Development Commissioner has mentioned in the order that prima facie the order passed by District Development Officer was not sustainable and accordingly Appeal has been allowed and the order dt.17.4.99 passed by the District Development Officer removing the petitioner has been set aside. In the facts of the present case, I find that both the orders are cryptic in nature and if the order passed by the District Development Officer was not a detailed and elaborate order, the Appellate Authority had a greater responsibility to pass a reasoned and speaking order, apart from the fact that the very tenor of the order as a whole shows total lack of application of mind so as to take the order of removal as an order of suspension.

In the facts and circumstances of this case, I find that the impugned order dt.10.6.99 passed by the Addl. Development Commissioner allowing the Appeal of respondent No.3 cannot be sustained in the eye of law. The same is hereby quashed and set aside. The matter is, therefore, remanded back to the Addl. Development Commissioner, who shall proceed to decide the Appeal afresh after due notice to the concerned parties. The Appeal shall be decided at the earliest possible

opportunity and the Addl.Development Commissioner would also pass a detailed speaking and reasoned order. This Special Civil Application is accordingly allowed. Rule is made absolute. No order as to costs.

(M.R.Calla, J)